

REMARKS/ARGUMENTS

Claims 77, 79-81 and 83- 96 are now pending in the application. Applicants have amended claims 93 and 94 to clarify the language.

1. Rejection under 35 U.S.C. 112, second paragraph.

Claims 94 and 95 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action indicates that the use of the term “fusion molecule” in claim 94 is ambiguous.

Applicants have amended claim 94 to recite a homodimer wherein said homodimer comprises the fusion molecule of claim 93 covalently linked to a second identical fusion molecule. Applicants believe that this amendment removes any ambiguity. Applicants respectfully request that the rejection be withdrawn.

2. Rejection under 35 U.S.C. 102(a) as being anticipated by Zhu et al., (Abstract 273, Clinical Immunology 99(1): 193, April 19, 2001).

Claims 77, 79-81, 83-92 and 96 stand rejected under 35 U.S.C. 102(a) as allegedly being anticipated by Zhu et al., (Abstract 273, Clinical Immunology 99(1): 193, April 19, 2001).

The law clearly establishes that an inventor’s own work may not be prior art under §102(a) even if it has been disclosed to the public in the manner or form which would otherwise fall under §102(a). As the Court in In re Katz noted, “a printed publication cannot stand as a reference under §102(a) unless it is describing the work of another.” (emphasis added) In re Katz, 687 F.2d 450, 454 (CCPA, 1982).

The cited Abstract is co-authored by (1) Daocheng Zhu, (2) Min Zhang, (3) Christopher L. Kepley, (4) Ke Zhang and (5) Andrew Saxon. Co-authors (1), (4) and (5) are named inventors in the present application. The CCPA has held, in In re Katz that authorship of an article by itself does not raise a presumption of inventorship with respect to the subject matter disclosed in the

article. Thus, coauthors may not be presumed to be coinventors merely from the fact of co-authorship. Under established case law, to overcome this rejection applicants merely must make a sufficient showing that the subject disclosure was applicants' original work, and theirs alone. Such a showing can be made under 37 CFR § 1.132.

Declarations under 37 C.F.R. § 1.132 by Ke Zhang and Andrew Saxon are enclosed herewith. An unsigned Declaration of Daocheng Zhu is attached. A signed version will be provided separately.

Withdrawal of this rejection is respectfully requested.

3. Rejection under 35 U.S.C. 103(a) as being unpatentable over Zhu et al., (Abstract 273, Clinical Immunology 99(1): 193, April 19, 2001) in view of U.S. Patent No. 5,116,964.

Claim 85 stands rejection under 35 U.S.C. 103(a) as being unpatentable over Zhu et al., in view of U.S. Patent No. 5,116,964. It allegedly would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the human IgG1 heavy chain constant region in the fusion molecule taught by Zhu et al., for the human IgG2, IgG3 or IgG4 constant region as taught by the '964 patent. From the combined teachings one skilled in the art would allegedly have had a reasonable expectation of success.

As discussed above, the law clearly establishes that an inventor's own work may not be prior art under §102(a) even if it has been disclosed to the public in the manner or form which would otherwise fall under §102(a). Applicants enclosed declarations under 37 C.F.R. § 1.132 by Daocheng Zhu, Ke Zhang and Andrew Saxon. These declarations remove Zhu et al. as a reference.

The '964 reference does not teach or suggest a fusion molecule of IgG heavy chain constant region attached to a IgE heavy chain constant region. Absent such a teaching or suggestion the '964 reference does not render the claim obvious. Withdrawal of this rejection is respectfully requested.

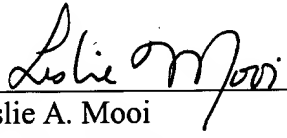
Applicants believe that this application is in condition for allowance.

CONCLUSION

Should the Examiner find that there are any further issues outstanding, the Examiner is invited to call the undersigned attorney to arrange the time for a personal interview. Please direct any calls in connection with this application to the undersigned at the number provided below.

Respectfully submitted,

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